

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH CAROLINA

IN RE: Walker Russell Harter Sr.

DEBTOR/OBJECTOR

-VS-

William Simmons

CASE NO: 19-02789-dd

CHAPTER: 7

NOTICE OF MOTION/APPLICATION AND
OPPORTUNITY FOR HEARING

NOTICE OF OBJECTION TO

Walker Russell Harter Sr. has filed papers with the court to Object to the Claim of William Simmons.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the Objection, or you want the court to consider your views on the objection], then within 30 days of service of this notice, you or your attorney must:

File with the court a written response, return, or objection at:

1100 Laurel Street
Columbia, SC 29201

Responses, returns, or objections filed by an attorney must be electronically filed in ecf.scb.uscourts.gov.

If you mail your response, return, or objection to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above.

You must also send a copy to:

Philip Fairbanks, 1214 King Street, Beaufort, SC 29902

Attend the hearing scheduled to be heard on February 25, 2020 at 9:00 a.m. at the United States Bankruptcy Court, 145 King Street, Room 225 Charleston, SC.

If no response, return, and/or objection is timely filed and served, no hearing will be held on this objection, except at the direction of the judge.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Date: January 8, 2020

/s/ Philip Fairbanks

Signature of Attorney/*Pro Se* Debtor

Philip Fairbanks

1214 King Street

Beaufort, SC 29902

843.521.1580

843.521.1590

DCID#756

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA
Charleston Division

IN RE:

Chapter 7

Case No.: 19-02789-dd

Walker Russell Harter, Sr.,

Debtor/Objector,

-vs-

William Simmons,

Claimants.

OBJECTION TO CLAIM and MEMORANDUM IN SUPPORT

TO THE ABOVE-NAMED CLAIMANT. DEBTOR IN THIS CASE HAS FILED AN OBJECTION TO YOUR CLAIM. YOU SHOULD CONSULT YOUR ATTORNEY. YOUR CLAIM MAY BE AFFECTED.

TO: Richard R. Gleissner, Esquire and William Simmons:

PLEASE TAKE NOTICE that Debtor, by counsel, objects to the claim of the above-named claimant in the amounts set forth in Claim No.: 17, filed in the above-captioned case on December 10, 2019, and any amendments thereto by Richard R. Gleissner, Esquire, Gleissner Law Firm, LLC 1237 Gadsden Street, Suite 200A Columbia, SC 29201, pursuant to 11 USC §§ 501 and 502, and Rule 3007 of the Federal Rules of Bankruptcy Procedure (FRBP).

The grounds for Debtor's objection to the claim are:

1. The Proof of Claim filed by counsel lacks proper or supporting documentation for the claim, including, but not limited to the basis for the validity of or the amount of the claim.
2. The Proof of Claim fails to comply with Rules 3001 and 3002.
3. The Claim is included in Debtor's schedules as a disputed claim.
4. The Proof of Claim is based on a default judgment entered against Debtor in a state court proceeding, and is thus not entitled to preclusive effect under applicable South Carolina law. *Kunst v.*

Loree, 404 S.C. 649, 656, 746 S.E.2d 360, 363 (SC App 2013). *See also Voss v. Pujdak (In re Pujdak)*, 462 B.R. 560, 568 (Bankr. DSC 2011) (accord).

5. Because no support is provided other than a Transcript of Judgment the Proof of Claim is not entitled to the presumption of validity or amount pursuant to Rule 3001(f). *In re Devey*, 590 B.R.706 (Bankr. D.S.C. 2018) *citing, inter alia, In re Hilton*, C/A No. 12-61102, 2013 WL 6229100, at *5 (Bankr. W.D. Va. Dec. 2, 2013) (“[C]ourts have held that failing to supply [required] documentation ... deprives the claim of prima facie validity.”)

6. Because the default judgments entered in a state court proceeding are not entitled to preclusive effect, including as to the basis for and amounts of the alleged debts, the included claim is in effect contingent and unliquidated.

7. The claim is not an “allowed claim” under 11 USC § 502(a), because the Proof of Claim fails to provide an adequate evidentiary basis for the validity or amount of the claims. It is consequently “speculative and unenforceable.” *In re Devey, supra*.

8. Because the purported claim is unsupported by competent evidence, the evidentiary burden does not shift to the Debtor pursuant to § 502(a), rather claimant “had [both] the initial and the ultimate burden of proof...to establish [his][c]laim.” *Id.*

9. Claimant has failed to “satisfy [the] burden of establishing [his] claim, and therefore, like plaintiffs who fail to meet their burden in a state court trial, their right to recovery fails” and as a result, Debtor’s objection is entitled to be sustained based (among other grounds) on the claimant’s failure to establish the enforceability of his claim. *See, 11 USC § 502(b)(1) & (f)*.

10. Accordingly, Debtor is entitled to the dismissal or disallowance of the claim in its entirety. *Id., citing In re LJL Truck Center, Inc.*, 299 BR 663, 666 (Bankr MDGa 2003) (Claimants’ failure to establish their purported causes of action or entitlement to damages under any cause of action, resulted in disallowance of the claim in its entirety.).

11. Debtor is further informed and believes that the underlying state court claim was based on specious legal and factual grounds, and would be unenforceable against Debtor, irrespective of the burden shifting effect of Rule 3001(f), based on the affidavit filed with this objection.

WHEREFOR, Debtor, by counsel, requests that claim, Claim No.: 17, be disallowed entirely, or, alternatively, be allowed as unsecured claims in the amount of \$-0-.

PHILIP FAIRBANKS, ESQ., P.C.

/s/ Philip Fairbanks
Philip Fairbanks DCID # 756
1214 King Street
Beaufort, SC 29902
Telephone: (843) 521-1580
Email: chris@lowcountrybankruptcy.com

Beaufort, South Carolina

January 8, 2020

CERTIFICATE OF MAILING

I hereby certify that on this 8th day of January, 2020, I placed a true copy of the foregoing in the United States mail, first class postage prepaid, addressed as follows:

**Estate of Jack Morris,
c/o Richard R. Gleissner
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, SC 29201**

**Harry Mole,
c/o Richard R. Gleissner
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, SC 29201**

**Evelyn Mole
c/o Richard R. Gleissner
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, SC 29201**

**Bobby Wilson, Jr.
c/o Richard R. Gleissner
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A**

Columbia, SC 29201

**Michael Artie Howard
c/o Richard R. Gleissner
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, SC 29201**

**Akeya Johnson
c/o Richard R. Gleissner
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, SC 29201**

**Sharon Duggan
c/o Richard R. Gleissner
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, SC 29201**

**Laquintun Davis,
c/o Richard R. Gleissner
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, SC 29201**

**Ulysee Bunch
c/o Richard R. Gleissner
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, SC 29201**

**Wilbert Golden
c/o Richard R. Gleissner
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, SC 29201**

**Teresa Golden
c/o Richard R. Gleissner
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, SC 29201**

**Bobby Wilson, Sr.
c/o Richard R. Gleissner
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, SC 29201**

**James Freeman
c/o Richard R. Gleissner
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, SC 29201**

**Vincent Tony Howard,
c/o Peter D. Protopapa
Rikard & Protopapas
PO Box 5640
Columbia, SC 29250**

**Dominique Stewart,
c/o Peter D. Protopapas
Rikard & Protopapas
PO Box 5640
Columbia, SC 29250**

**Peter D. Protopapa, Esquire
Rikard & Protopapas
PO Box 5640
Columbia, SC 29250**

**Richard R. Gleissner, Esquire
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, SC 29201**

**Michelle L. Vieira, Esquire
Ch. 7 Trustee
PO Box 1480
Murrells Inlet, SC 29576**

**Office of the United States Trustee
(by CM/ECF)**